

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0565, MDR Corporation v. Anthony Scappicio, James Mower and Mary Mower, the court on October 17, 2006, issued the following order:

The defendants, James Mower and Mary Mower, appeal an order of the trial court denying their request for damages after the court found that the plaintiff breached a purchase and sales agreement. They argue that the trial court erred in considering the plaintiff's liability at a hearing scheduled on damages and in failing to compare the value of their land had the plaintiff performed under the contract with its value after the breach. We affirm.

We will overturn a damage award only if we find it to be clearly erroneous. T&M Assocs. v. Goodrich, 150 N.H. 161, 164 (2003). The amount of damages to be awarded in a particular case is essentially a question of fact. Jackson v. Morse, 152 N.H. 48, 51 (2005).

We note at the outset that the purchase and sale contract provided for the sale of two parcels of land; the contract did not apportion the sale proceeds between the two parcels. The trial court found that the plaintiff did not breach the purchase and sale contract with respect to the second parcel; rather, the plaintiff was released from any contractual obligations to purchase that parcel. While the defendants argue that the value that the contract was to provide to them was the correct measure of damages to be awarded, it was within the trial court's authority to find that such an award would be inequitable under the circumstances of this case. See id. at 53. The trial court found that Mr. Mower conceded that without the sale of the second parcel his land was worthless. That finding is not challenged on appeal. Based upon the record before us, we find no error in the trial court's ruling.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox
Clerk**